

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

6 vs.)

7 DERREL McDAVID, et al.,)

8 Defendants.)

No. 19 CR 567

Chicago, Illinois

August 28, 2019

9:26 o'clock a.m.

9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE HARRY D. LEINENWEBER

11 APPEARANCES:

12 For the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE
MS. ANGEL KRULL

219 South Dearborn Street
Chicago, Illinois 60604
312-353-5300

14 For the Defendant
15 Derrel McDavid:

LAW OFFICE OF BEAU B. BRINDLEY
MR. BEAU B. BRINDLEY
53 West Jackson Boulevard
Chicago, Illinois 60604
312-765-8878

VADIM A. GLOZMAN LTD.
MR. VADIM A. GLOZMAN
53 West Jackson Boulevard
Chicago, Illinois 60604
312-726-9015

23 Court Reporter:

FEDERAL OFFICIAL COURT REPORTER
MS. KRISTA BURGESSON

219 South Dearborn Street
Chicago, Illinois 60604
312-435-5567

krista_burgesson@ilnd.uscourts.gov

09:26:16 1 THE COURTROOM DEPUTY: 19 CR 567, USA versus Derrell
09:26:18 2 McDavid.

09:26:18 3 MR. BRINDLEY: Good morning, Your Honor. Beau
09:26:18 4 Brindley and Vadim Glozman on behalf of Derrell McDavid, who is
09:26:19 5 present.

09:26:19 6 MR. GLOZMAN: Good morning.

09:26:22 7 THE DEFENDANT: Good morning.

09:26:23 8 MS. KRULL: Good morning, Your Honor. Angel Krull on
09:26:24 9 behalf of the United States.

09:26:27 10 PRE-TRIAL OFFICER: Good morning. Pre-Trial
09:26:34 11 Services.

09:26:34 12 THE COURT: All right.

09:26:37 13 What is the difference between your two motions,
09:26:40 14 Mr. Brindley? Maybe you could start by telling me that.

09:26:42 15 MR. BRINDLEY: First of all, the first motion, Judge,
09:26:45 16 is a motion to modify his conditions overall such that he is
09:26:49 17 not subjected to a curfew and can deal with the business of
09:26:53 18 his restaurant at whatever hour is necessary, and can travel
09:26:57 19 for his businesses as needed without me having to come here
09:27:01 20 and make a motion every time. That is the first one.

09:27:04 21 The second one has to do with an emergency situation,
09:27:07 22 I believe there was a death in the family that he needs to
09:27:10 23 travel for, and Mr. Glozman can address that one further.

09:27:13 24 MR. GLOZMAN: Yes, Judge.

09:27:14 25 Earlier this week Mr. McDavid's cousin passed away.

09:27:18 1 There is a funeral service Saturday at 2:00 o'clock p.m. in
09:27:22 2 Minnesota.

09:27:23 3 So notwithstanding our original request to modify the
09:27:24 4 conditions of release, we are asking for him to be able to
09:27:26 5 drive to Minnesota from Thursday to Sunday to go to this. I
09:27:30 6 spoke with Ms. Krull and she indicated this morning that she
09:27:32 7 had no objection to that specific request.

09:27:34 8 THE COURT: Is that correct?

09:27:35 9 MS. KRULL: That is correct. I have no objection for
09:27:37 10 Mr. McDavid to attend the funeral.

09:27:41 11 THE COURT: Okay. We will grant that one.

09:27:46 12 Now, the second one is to release him and let him
09:27:49 13 behave like he is not under any --

09:27:49 14 MR. BRINDLEY: Well, Judge, not exactly that.

09:27:50 15 We are proposing -- pre-trial has the capability, and
09:27:53 16 we have just confirmed, of putting him on a GPS ankle
09:27:58 17 bracelet, meaning that they will be able to monitor where he
09:28:00 18 is at any time. And we believe if monitoring is required, and
09:28:04 19 the statute indicates that it is, then Mr. McDavid, given the
09:28:08 20 nature of the conduct that he is charged with, and his
09:28:13 21 history, is a person who does not need the more strict
09:28:17 22 scrutiny that has been imposed here.

09:28:19 23 Normally this statute is meant to protect the public
09:28:24 24 from predators, but nobody is even alleging that is
09:28:28 25 Mr. McDavid. Mr. McDavid is alleged to have obtained child

09:28:32 1 pornography for basically the purpose of destruction and
09:28:37 2 obstruction of justice. And he has no substantial criminal
09:28:38 3 history of any sort.

09:28:39 4 It is worthy of note, Judge, that Mr. McDavid was
09:28:43 5 subpoenaed by the Grand Jury in February of 2019, so he knew
09:28:48 6 all about this, and he traveled to and from Miami, Florida,
09:28:48 7 back and forth, with no issue, he has made no effort to leave,
09:28:57 8 he has done nothing wrong, and he surrendered himself to the
09:29:01 9 U.S. Marshal Service.

09:29:01 10 This is the kind of person in a normal case alleged
09:29:06 11 to have been involved in obstruction of justice conduct of
09:29:08 12 this sort that would make sense, in any other circumstance,
09:29:11 13 for him to not have ankle monitor at all.

09:29:14 14 Now, the statute, because of that which he is
09:29:16 15 charged, requires some kind of monitoring, and it indicates
09:29:20 16 that he has to comply with any specified curfew conditions.
09:29:25 17 And of course it is up to Your Honor to set any and specify
09:29:28 18 any. And given that he is in the restaurant business, his
09:29:31 19 business is ongoing late at night and every night, he has to
09:29:33 20 deal with this business, it doesn't make sense. And he also
09:29:36 21 has business around the country, and he should be able to
09:29:39 22 conduct this business.

09:29:40 23 That is all we are asking for, Judge.

09:29:42 24 THE COURT: What kind of restaurants, singular and
09:29:48 25 plural, does he have? There is one here in Chicago,

09:29:51 1 apparently?

09:29:53 2 MR. BRINDLEY: Yes, Judge, and we can discuss it
09:29:55 3 under seal, but I don't want to -- I would be happy to do
09:30:00 4 that.

09:30:00 5 THE COURT: What type of restaurant?

09:30:02 6 MR. BRINDLEY: Mexican restaurant, Judge.

09:30:06 7 THE COURT: And how many restaurants does he have
09:30:08 8 currently?

09:30:08 9 MR. BRINDLEY: He has one here, and they have been in
09:30:11 10 the process of expanding, and that is what he is going to
09:30:14 11 Florida for.

09:30:16 12 THE COURT: So he has one and he wants to have a
09:30:18 13 second one in Florida?

09:30:20 14 MR. BRINDLEY: Yes, Judge.

09:30:21 15 He is also a certified public accountant who has
09:30:24 16 accounting clients around the country, too.

09:30:27 17 So in terms of doing his work, he really does need to
09:30:31 18 be able to travel, and under the circumstances, what he is
09:30:35 19 alleged to have done, and who he has been for his whole life,
09:30:39 20 there is no good reason why we need to have him under these
09:30:43 21 strict conditions, and we can relax them. He is not going to
09:30:46 22 break them.

09:30:47 23 So if it is a GPS monitor he has to do, I know he has
09:30:51 24 to plug it in and change the batteries, he will do that. But
09:30:54 25 this curfew that prevents him from being out when he needs to

09:30:58 1 be out to address things that come up at night at the
09:31:01 2 restaurant has been very difficult already, and that is why we
09:31:05 3 are here.

09:31:05 4 Given what he has done and alleged to have done, it
09:31:09 5 is not fair for him to be treated in the same way as other
09:31:12 6 people who are actual predators out there who we need to
09:31:16 7 protect the public from. That is what these statutes are for.

09:31:20 8 So we need to make a modification, which we can. The
09:31:22 9 statute says that he has to be monitored and he has to comply
09:31:29 10 with whatever specified conditions there are. And if we can
09:31:31 11 make that as to curfew, if we can specify 24 hours, he can be
09:31:37 12 out and report as needed to Pre-Trial Services about where he
09:31:39 13 is going.

09:31:40 14 That would satisfy the statute and that is basically
09:31:43 15 what we need.

09:31:43 16 THE COURT: Ms. Krull?

09:31:45 17 MS. KRULL: Thank you, your Honor, a couple things.

09:31:46 18 Under the Bail Reform Act 3142, a curfew is mandated
09:31:51 19 for people who are charged with receiving child pornography.
09:31:54 20 It says, shall be imposed, this condition of a curfew shall be
09:31:59 21 imposed. That was enacted under the Adam Walsh Act, and so it
09:32:04 22 is a mandatory condition.

09:32:05 23 Right now his curfew is 9:00 p.m. In the initial
09:32:10 24 discussions with Mr. Glozman, the government agreed, based on
09:32:13 25 Mr. McDavid's work schedule, to extend that to midnight, and

09:32:17 1 even that we thought was generous, to allow that to midnight.
09:32:20 2 But there is no reason that he needs to be at this restaurant
09:32:23 3 beyond that. He is not there running the day-to-day business,
09:32:27 4 he is an owner at this restaurant.

09:32:29 5 On top of that, Mr. McDavid is a very wealthy man.
09:32:33 6 He is not needed to work for livelihood. Like a lot of other
09:32:38 7 defendants that you see before you, they need to have their
09:32:43 8 curfews extended for certain hours to allow them to work so
09:32:47 9 they can maintain their bills, pay their bills, and support
09:32:51 10 their family. That is not the situation here. Mr. McDavid is
09:32:55 11 a very wealthy man. He does not need these extended
09:32:58 12 conditions to allow him to pay his bills.

09:33:01 13 Mr. McDavid is charged with very serious crimes here
09:33:05 14 and Mr. Brindley is minimizing the allegations against
09:33:09 15 Mr. McDavid.

09:33:10 16 The allegations against Mr. McDavid are that he
09:33:14 17 actually knew that Mr. Kelly was sexually abusing minors and
09:33:19 18 actively covered it up, it was intentional, and he took steps
09:33:23 19 to cover that up. That he actually met some of these minors
09:33:27 20 and knew that -- and knew what Robert Kelly was doing to these
09:33:30 21 minors, and that he actively covered it up. It is not
09:33:34 22 something like he was just speculating or guessing or maybe
09:33:38 23 had intuition that Mr. Kelly was doing this, no, the
09:33:41 24 allegation in the indictment is that he actually knew that
09:33:44 25 these things were happening, and that he covered them up.

09:33:48 1 That is a reason why these conditions are appropriate
09:33:51 2 here, and that is why he is charged with a statute that he is
09:33:54 3 charged with. He actually received child pornography, child
09:33:57 4 pornography that he knew existed, child pornography that he
09:34:01 5 watched, child pornography that talked about -- where the
09:34:05 6 child's age was mentioned on the video.

09:34:07 7 THE COURT: You say he took possession of it. What
09:34:09 8 did he do with it?

09:34:10 9 MS. KRULL: He took it on behalf of Robert Kelly and
09:34:13 10 hid it from the government. This was happening when
09:34:16 11 Mr. Kelly's prior case was pending at the State's Attorneys'
09:34:20 12 Office at Cook County, and these videos that Mr. McDavid
09:34:24 13 possessed were of the same minor who was at issue at the case
09:34:31 14 pending before Cook County.

09:34:32 15 So that was critical evidence relating to that trial
09:34:37 16 that Mr. McDavid had in his possession, that he is currently
09:34:41 17 charged with.

09:34:42 18 THE COURT: That is closer to obstruction of justice
09:34:45 19 as opposed to possession of pornography. I mean, it is sort
09:34:50 20 of -- I mean, it is -- it is not the same. I mean, I can
09:34:56 21 understand where you can make the argument that it fits the
09:35:01 22 crime, but it is not -- it is dissimilar in most respects.

09:35:05 23 MS. KRULL: Correct.

09:35:06 24 THE COURT: I mean, most of the time, in 99.99 -- in
09:35:10 25 fact, probably the first one I have ever had, I have had other

09:35:14 1 ones where the person possesses child pornography for purposes
09:35:18 2 of his own -- for the purpose of his own -- what is the term
09:35:22 3 that I am thinking of?

09:35:23 4 MR. BRINDLEY: Enjoyment, I suppose, Judge.

09:35:24 5 MS. KRULL: Sexual interest in minors.

09:35:27 6 THE COURT: Okay, yes.

09:35:27 7 MS. KRULL: And I have been clear all along, Your
09:35:29 8 Honor, that the allegation is not that Mr. McDavid --

09:35:32 9 THE COURT: I know, it is different, he doesn't have
09:35:34 10 -- at least we don't know, I don't think it is charged, that
09:35:37 11 he had any kind of sexual interest in this kind of thing, it
09:35:42 12 was more obstruction of justice as opposed to -- it may fit
09:35:48 13 under the crime, I am not saying that he is innocent of the
09:35:52 14 crime, but it seems to me to be substantially different.

09:35:52 15 What is the view of Pre-Trial Services?

09:35:54 16 PRE-TRIAL OFFICER: Pre-Trial Services would object
09:35:56 17 to defendant being placed on GPS and not having a curfew.

09:36:01 18 The supervising officer indicated to defense counsel
09:36:15 19 that Pre-Trial Services would be willing to discuss amending
09:36:18 20 to the defendant's curfew should the defendant be able to
09:36:22 21 provide verification that he does need to be at the restaurant
09:36:27 22 after the curfew that he has. The curfew as it currently
09:36:30 23 stands is as directed by Pre-Trial Services, and so we do have
09:36:32 24 the ability to adjust it, but to this day we have not received
09:36:35 25 any verification that Mr. -- or that the defendant needs to be

09:36:40 1 at the place of employment past 9:00 p.m. So that is why the
09:36:44 2 curfew stands.

09:36:47 3 THE COURT: I don't think there is anything
09:36:49 4 particularly wrong with the defendant earning money while he
09:36:53 5 is awaiting trial, particularly if he owes attorney's fees.

09:36:57 6 MR. BRINDLEY: Oh, he certainly does, and we need to
09:36:59 7 get them paid.

09:36:59 8 THE COURT: And I don't make light of that.

09:37:02 9 But it seems to me that it is -- why doesn't midnight
09:37:06 10 work?

09:37:06 11 MR. BRINDLEY: Judge, there are a couple of reasons.

09:37:08 12 THE COURT: Or maybe on weekends he needs more time?

09:37:12 13 MR. BRINDLEY: Part of it is when he needs to travel,
09:37:16 14 if he is going to travel, he will often travel overnight so he
09:37:20 15 can be there and have meetings in the morning in other places
09:37:24 16 like Florida, and so we are limiting his ability to do that.

09:37:28 17 What this ultimately seems to amount to to me, Judge
09:37:30 18 is placement of form over substance. Substantively we are not
09:37:34 19 dealing with the kind of offender who needs these
09:37:36 20 restrictions, and pre-trial is focusing on the form rather
09:37:40 21 than the substance.

09:37:41 22 Your Honor today can issue an order that says he is
09:37:44 23 placed on a 24-hour curfew, which will allow him to be out,
09:37:47 24 and on GPS monitoring, and then pre-trial will have to do
09:37:52 25 that, and then they will know where he is at and he won't be

09:37:54 1 limited in an unfair way.

09:37:56 2 In restricting his ability to make money and to be
09:37:59 3 treated like he deserves to be treated in light of what is
09:38:03 4 alleged against him, rather than the category of crime, is --
09:38:06 5 see, the category of crime hurts him, not what he is alleged
09:38:10 6 to have done, he is alleged to having gotten rid of the stuff.
09:38:14 7 He didn't want it.

09:38:15 8 So as a result -- even by their allegation.

09:38:17 9 So as a result of that, Judge, treating him that way,
09:38:19 10 like one of these other offenders, isn't right, and it places
09:38:23 11 form over substance.

09:38:24 12 Pre-trial is not saying they can't put him on GPS
09:38:28 13 monitoring, they can, and they can --

09:38:29 14 THE COURT: Let me ask about that.

09:38:31 15 If I ordered GPS is that workable? Or why wouldn't
09:38:37 16 that be workable?

09:38:38 17 PRE-TRIAL SERVICES OFFICER: It is workable, we do
09:38:40 18 have GPS technology, we just feel that based on the identified
09:38:45 19 risks that we outlined in our Pre-Trial Services report and
09:38:51 20 that --

09:38:51 21 THE COURT: I don't believe I have a copy of that.
09:38:51 22 Does anyone have a copy of that?

09:38:53 23 Do you have yours?

09:38:55 24 PRE-TRIAL SERVICES OFFICER: I do not.

09:38:56 25 MS. KRULL: Your Honor, I don't believe one was ever

09:38:58 1 created for Mr. McDavid because we agreed on conditions.

09:39:02 2 There was not a contested detention hearing here.

09:39:05 3 THE COURT: Okay.

09:39:05 4 MR. GLOZMAN: And if there was never one created,
09:39:07 5 there were no identified risks then.

09:39:10 6 PRE-TRIAL SERVICES OFFICER: There is one created for
09:39:11 7 all cases, but after a bond determination is made it is not
09:39:16 8 shared with all attorneys.

09:39:17 9 THE COURT: What would be the -- you know, we have
09:39:18 10 discussed the --

09:39:19 11 I tend to agree with Mr. Brindley, you know, he is
09:39:22 12 not a routine type of child pornographer, in fact, he
09:39:29 13 certainly wasn't disseminating it, he was accepting it but not
09:39:35 14 for the usual purposes that people do that sort of thing, and
09:39:40 15 so I am wondering what identifiable danger there would be if
09:39:44 16 we let him go to Florida, for example.

09:39:48 17 PRE-TRIAL SERVICES OFFICER: Your Honor, the Bail
09:39:52 18 Reform Act and the Adam Walsh Act all created these conditions
09:39:55 19 that pre-trial and probation are required to file, and --

09:39:58 20 THE COURT: I understand that, but I am trying to get
09:40:01 21 to if -- I mean, is anybody telling me I don't have the
09:40:05 22 authority to do what Mr. Brindley wants?

09:40:07 23 MS. KRULL: Your Honor, my understanding, and I am
09:40:09 24 reading directly from the release order here, it says that his
09:40:12 25 travel -- that he can travel as approved by Pre-Trial

09:40:17 1 Services. And so right now he does not have to come to court
09:40:21 2 to ask to go to Florida, he can just ask Pre-Trial Services
09:40:25 3 and they can --

09:40:26 4 THE COURT: Then what is the difference then?

09:40:28 5 MR. GLOZMAN: Judge, that is not accurate.

09:40:30 6 I actually called Pre-Trial about this and they said
09:40:32 7 that he --

09:40:32 8 THE COURT: Well, if she says he can travel, I don't
09:40:35 9 know how we have a problem. If he can travel he just has to
09:40:40 10 notify them that he is traveling.

09:40:41 11 MR. GLOZMAN: Judge, Pre-Trial is not allowing him to
09:40:47 12 travel without your permission because of the curfew. And so
09:40:51 13 because there is a curfew --

09:40:51 14 THE COURT: Okay, okay.

09:40:51 15 MS. KRULL: I think you could give Pre-Trial
09:40:54 16 discretion on that so we don't have to come to court every
09:40:57 17 time. Instead of making a blanket ruling today you could just
09:41:01 18 say that --

09:41:01 19 THE COURT: What I am thinking of is to eliminate the
09:41:04 20 curfew, allow him to travel provided he notifies ahead of time
09:41:09 21 his complete schedule, the usual one where we let a person
09:41:13 22 travel, and --

09:41:13 23 MR. BRINDLEY: Yes.

09:41:14 24 THE COURT: (Continuing) -- and if there are
09:41:16 25 problems, they can be brought to my attention, and then we can

09:41:19 1 do something about it.

09:41:21 2 But it seems to me that he shouldn't -- with the
09:41:28 3 particular charges, as I understand them, he should be
09:41:38 4 distinguished from other pornographers.

09:41:39 5 MS. KRULL: Your Honor, I have a request.

09:41:39 6 THE COURT: Yes.

09:41:42 7 MS. KRULL: Instead of just notice to Pre-Trial
09:41:43 8 Services, if Pre-Trial Services could approve the travel, so
09:41:45 9 they can verify the travel, since you are eliminating the
09:41:49 10 curfew, then there goes that problem. But I still think
09:41:52 11 Pre-Trial Services should have the ability to approve or
09:41:55 12 disapprove the travel based on the representations and the
09:41:58 13 proof offered as to the reason for the travel, and if there is
09:42:01 14 an issue after that --

09:42:02 15 THE COURT: Okay, I will say this, that he can travel
09:42:05 16 for purposes of business, and he can't travel to Florida
09:42:12 17 because it is warm and that sort of thing. So the Pre-Trial
09:42:18 18 Services could disallow it if it isn't for specific purposes
09:42:24 19 or for --

09:42:25 20 MR. BRINDLEY: Business purposes.

09:42:26 21 THE COURT: (Continuing) -- business purposes related
09:42:29 22 with his restaurant businesses.

09:42:32 23 MR. BRINDLEY: Yes, Your Honor.

09:42:32 24 MS. KRULL: Okay.

09:42:33 25 THE COURT: So we will do it that way.

09:42:33 1 MR. GLOZMAN: And Your Honor, if there is just
09:42:35 2 another emergency, like this one, the funeral in Minnesota, it
09:42:42 3 was unexpected, that wouldn't fall into the category of
09:42:48 4 business travel. So could that also go through Pre-Trial
09:42:51 5 Services rather than before Your Honor?

09:42:52 6 THE COURT: I don't understand. I authorized him to
09:42:55 7 go to the funeral.

09:42:56 8 MR. GLOZMAN: I am saying if there is something in
09:42:58 9 the future that --

09:42:59 10 MR. BRINDLEY: Like if another personal issue comes
09:43:02 11 up, can we go to Pre-Trial Services or do we have to come
09:43:07 12 before you?

09:43:07 13 THE COURT: Are you expecting someone else to die?

09:43:12 14 THE DEFENDANT: A lot of my relatives are old, Judge.

09:43:16 15 THE COURT: Well, I am too.

09:43:19 16 MR. BRINDLEY: Judge, if it is an emergency situation
09:43:21 17 like that, we can just come in. That is easy enough.

09:43:25 18 THE COURT: Okay.

09:43:25 19 MR. BRINDLEY: I do want to clarify one thing about
09:43:27 20 his business, when he is traveling with business, he is in the
09:43:29 21 restaurant business, and he also has these accounting clients.
09:43:31 22 So I would like it to cover both, not just the restaurant
09:43:34 23 business but his accounting work as well.

09:43:34 24 THE COURT: Okay.

09:43:36 25 MR. BRINDLEY: So for a work-related purpose,

09:43:38 1 whatever it is, that is what I am asking.

09:43:40 2 THE COURT: All right. That seems to me that that is
09:43:42 3 reasonable.

09:43:43 4 MR. BRINDLEY: All right.

09:43:44 5 Thank you, Your Honor.

09:43:44 6 THE DEFENDANT: Thank you.

09:43:45 7 THE COURT: Anything else?

09:43:46 8 MR. BRINDLEY: No, Your Honor.

09:43:47 9 MR. GLOZMAN: No, Your Honor.

09:43:47 10 MS. KRULL: No, Your Honor.

09:43:49 11 THE COURT: All right.

09:43:49 12

09:43:49 13 (The above-mentioned case was recalled as follows:)

09:44:28 14

09:44:29 15 THE COURT: The question is, did I order GPS? And
09:44:31 16 the answer is, yes, I meant I am ordering GPS, because that
09:44:34 17 was agreed to.

09:44:37 18 MS. KRULL: Okay.

09:44:37 19 THE COURT: So we are ordering GPS.

09:44:39 20 MS. KRULL: Yes, your Honor.

09:44:40 21 MR. BRINDLEY: Yes, we figured that.

09:44:41 22 THE COURT: Just wanted to make sure.
23 Okay.

24 (Proceedings concluded.)

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/Krista Burgeson, CSR, RMR, CRR
Federal Official Court Reporter

May 28, 2021
Date